Supreme Court, U.S.
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NO. 83-1613

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

LOUIE L. WAINWRIGHT, Secretary
Florida Department of Corrections,

Petitioner,

- against -

WILLIE JASPER DARDEN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals erred in holding that the exclusion for cause of venireman Murphy violated Witherspoon v. Illinois, 391 U.S. 510 (1968), where the state trial judge, in questioning this venireman, established only that Mr. Murphy was incapable of voting for capital punishment without violating his principles -- not that he was incapable of putting aside those principles and doing his duty as a juror.

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OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported when the certiorari petition was filed, is now reported and appears at 725 F.2d 1526.

STATEMENT OF THE CASE

The facts are sufficiently set forth in the opinion of the Court of Appeals, as reproduced in Appendix A to the certiorari petition at A. 17-20 and 26-28 nn.4-6, 725 F.2d at 1531-32.

REASONS FOR DENYING THE WRIT

Review by this Court is not warranted, because the exclusion for cause of venireman Murphy was an obvious and blatant violation of Witherspoon v. Illinois, 391 U.S. 510 (1968) and its progeny. Whether or not the various questions of

constitutional law discussed in the certiorari petition are worthy of review, this case presents a singularly inappropriate vehicle for consideration of those questions.

Mr. Murphy was excused solely on the basis of the following question and answer:

> THE COURT: Do you have any moral or religious, conscientious moral or religious principles in opposition to the death penalty so strong that you would be unable without violating your own principles to vote to recommend a death penalty regardless of the facts?
>
> MR. MURPHY: Yes, I have.

A. 17, 725 F.2d at 1530-31 (emphasis in opinion below). Thus, the trial judge's questioning of Mr. Murphy established only that he could not vote for death "without violating ... [his] own principles," ibid. But the whole point of Witherspoon is that some prospective jurors are perfectly capable of setting aside their personal principles against capital punishment in order to do their duty as jurors. As the Court stated in Witherspoon itself:

> It is entirely possible, of course, that even a juror who believes that capital punishment should never be inflicted and who is irrevocably committed to its abolition could nonetheless subordinate his personal views to what he perceived to be his duty to abide by his oath as a juror and to obey the law of the State.

391 U.S. at 514 n. 7. Again, in Boulden v. Holman, 394 U.S. 478, 483-84 (1969), quoted with approval in Adams v. Texas, 448 U.S. 38, 44-45 (1980), the Court reiterated this fundamental underlying tenet of Witherspoon:

> [I]t is entirely possible that a person who has a "fixed opinion against" or who does not "believe in" capital punishment might nevertheless be perfectly able as a juror to abide by existing law -- to follow conscientiously the instructions of a trial judge and to consider fairly the imposition of the death sentence in a particular case.

Thus, to state that Mr. Murphy's exclusion may be upheld because he could not vote for capital punishment without violating his principles is a complete non sequitur. At no time was it shown that Mr. Murphy was incapable of setting aside those principles, following the law and doing his civic duty as a responsible juror. As the Court of Appeals succinctly stated:

> The question in a Witherspoon inquiry is not whether prospective jurors could vote for the death penalty without violating their principles, but whether, if they have principles against capital punishment, they could put them aside and vote for the death penalty when the law and the facts of the case require it.

A. 17-18, 725 F.2d at 1531.

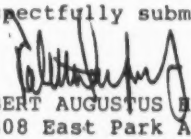
The Court of Appeals' resolution of this case is especially unassailable because the Witherspoon error here was caused solely by the trial judge's failure to ask the correct question on voir dire examination -- not by any ambiguity or indecisiveness in the venireman's answer. The venireman gave a simply and straightforward answer -- "Yes, I have" -- but to the wrong question. Accordingly, this is hardly the appropriate case in which to consider all sorts of wide-ranging procedural questions as to how trial judges should deal with ambiguous or indecisive answers, and how much deference reviewing state and federal courts should accord to the trial judges' determinations in such instances. This is simply a case in which the trial judge employed a constitutionally incorrect standard in his questioning of a prospective juror, and hence obtained a constitutionally meaningless answer.1/ Certiorari should be denied.

1/ As noted by the Court of Appeals below, the trial judge in this case had lapsed into incorrect formulations of the Witherspoon test on more than one occasion. See A. 26-28 nn. 4, 6; 725 F.2d at 1531 n. 4, 1532 n. 6.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,



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